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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/762,307	01/23/2004	Shawn Poole	069752-0101	4625

22428 7590 05/26/2006

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EXAMINER	
MAYES, MELVIN C	
ART UNIT	**PAPER NUMBER**
1734	

DATE MAILED: 05/26/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/762,307	POOLE ET AL.	
	Examiner	Art Unit	
	Melvin Curtis Mayes	1734	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *08 March 2006*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-8,10-15,17-20,22-31 and 33-36* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-8,10-15,17-20,22-31 and 33-36* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 103

(1)

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

(2)

Claims 1, 2, 4-8, 13-15, 17-19, 23-28, 31, 34 and 35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Snyder et al. 6,199,614 in view of Bernhard et al. 6,024,149, Allen et al. 6,378,590 and Yamaguchi 5,300,181.

Snyder et al. disclose a labeling machine having a constant tension driving system for labeling articles comprising: supply roll 16 of labels mounted on a spindle; printer 112; dispensing unit 18 with peeler bar for removing labels from the backing material; applicator 20 for applying labels to articles; driving and metering roll 114 for pulling the web from the supply roll; constant tensioning device 24 for maintaining constant tension in the web downstream of the driving and metering roll and downstream of the peel bar; and take-up drum 26 for waste backing material. The applicator may be any conventional applicator such as conventional vacuum blow applicator. The constant tensioning device may be a power dancer 108 with pivotable lever arm 118. Take-up drum is mounted on a shaft of a motor which operates to rotate the drum. The drum is intermittently operated depending on the position of the lever arm and the motor is activated by a limit switch (col. 5-9). Snyder et al. do not disclose providing the applicator with a head having an angled surface.

Bernhard et al. teach that in an air-blast labeling apparatus, the air-blast labeling device comprises a suction plate 16 and air blast unit having air blast plate 19 with air blast nozzles 20 and fine-meshed screen 26 to compensate for the effect of differences in the flow of air between individual blast nozzles, the air blast unit connected to a supply of compressed air and the supply of air controlled by a three-way solenoid valve. The labeling device and transport device are controlled with sensor elements (col. 6, line 30 – col. 8, line 50).

Allen et al. teach that in a label applicator for holding a label on a label receiving face of a label receiver by vacuum and applying the label by air from the receiving face, the label receiving face may be planar or alternatively may be of different constructions and orientations (col. 5, lines 61-67).

Yamaguchi shows in Figure 2 that the suction plate of a label applicator for holding a label has an angled receiving face in which two surfaces are angled from a horizontal plane and angled from the center of the suction plate (Fig. 2).

It would have been obvious to one of ordinary skill in the art to have modified the method and machine of Snyder et al. for labeling articles by providing the vacuum blow applicator as an air blast device having suction plate and air blast unit having air blast plate and screen (air-directing manifold and baffle plate) and connected to a supply of compressed air controlled by a solenoid, as taught by Bernhard et al., as the parts of an air blast labeling device for applying labels.

It would have been obvious to one of ordinary skill in the art to have further modified the method and machine of Snyder et al. by providing the suction plate of the air blast device with an angled surface, as Allen et al. teach that that the label receiving face of a label applicator for

holding a label by vacuum (suction) can either be planar or of different constructions, and Yamaguchi suggest that the label receiving face of a suction plate for holding a label can have an angled surface such that it forms an angle from the center of the face. Providing the air-blast applicator head with a suction label receiving face that is angled from the center, thus having two angled surfaces that join at the midpoint of the face, would have been obvious to one of ordinary skill in the art, as suggested by Yamaguchi as a suitable construction for a receiving face of a label applicator and as it is not required that a label receiving face be planar, as taught by Allen et al. Providing the angled receiving face to have any angle less than 180°, such as 166°-174° as claimed in Claims 34 and 35, would have been obvious to one of ordinary skill in the art, as the receiving surface suggested by Yamaguchi appears to be close to planar yet forms an angle less than 180° similar to that as claimed.

(3)

Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claim 2, and further in view of Marano 3,436,294.

Snyder et al. disclose that the take-up drum is mounted on a shaft of a motor which operates to rotate the drum intermittently.

Marano teaches that in a label dispensing and applying apparatus having a take-up spindle intermittently driven to wind up label depleted tape, a drive motor is intermittently energized by way of an electrically controlled clutch and brake assembly (col. 3, lines 68 – col. 4, line 7).

It would have been obvious to one of ordinary skill in the art to have modified the machine of the references as combined for labeling by providing the motor for rotating the take-

up drum with a clutch, as taught by Marano, to intermittently energize the drive motor. By providing a clutch to intermittently energize the motor for the take-up drum, a clutch restricting the drum (reel) to turn in only one direction, as claimed, is obviously provided.

(4)

Claims 10, 20, 30, 33 and 36 are rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claim 1, 17 and 23, and further in view of O'Brien, Jr. 6,220,330.

Snyder et al. disclose that the printer is typically an "off-the-shelf" printer.

O'Brien, Jr. teaches that printing assembly that can be used to print labels include commercially available print engine available from Sato under Model No. 8485S. (col. 1, lines 1-7).

It would have been obvious to one of ordinary skill in the art to have modified the machine of the references as combined for labeling by providing the printer as a print engine available from Sato under Model No. 8485S, as taught by O'Brien, Jr., as a commercially available print assembly that can be used to print labels. By providing the printer as a Sato model, a printer which uses direct thermal or thermal transfer process is obviously provided.

(5)

Claims 11, 12, 22 and 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claims 1, 17 and 23, and further in view of Cleary et al. 3,682,743.

Cleary et al. teach that in a labeling machine, the supply reel of labels is mounted between guide discs 100, 102, at least one of the discs provided with a collar and releasable locking handle to permit spacing between the discs to be varied to accommodate supply reels of

varying width and allow easy removal of the disc for easy loading of a fresh roll of labels (col. 4, lines 20-42).

It would have been obvious to one of ordinary skill in the art to have modified the machine of the references as combined for labeling by providing the supply roll as mounted on the spindle between guide discs, one of which has a releasable locking handle, as taught by Cleary et al, to permit spacing between the discs to be varied to accommodate supply reels of varying width and allow easy removal of the disc for easy loading of a fresh roll of labels. By providing a guide disc with a releasable locking handle, a latch or latching means for holding the labels on the feed reel (spindle), as claimed, is obviously provided.

Response to Arguments

(6)

Applicant's arguments filed March 8, 2006 have been fully considered but they are not persuasive.

Applicant argues that in Yamaguchi, Figure 2 depicts a label that is angled, not the suction plate and argues that Examiner's reading of Figure 2 cannot be reconciled with the description and operation of the invention in that Yamaguchi says little about the suction plate and no mention is made of a bevel or angle. Applicant argues that the silence of Yamaguchi with respect to a angled applicator head suggest that there is nothing unique about the suction plate and the plate is flat like every other applicator head known in the art. Applicant argues that side views show a flat suction plate and the embodiment of Figure 10 is flat and is not distinguished from the other embodiments. Applicant argues that an applicator with an angled surface would

interfere with the ability of the pressing members to properly deform about an uneven surface in applying a label.

(7)

Applicant's arguments have been considered but are not convincing. Allen et al. teach that in a label applicator for holding a label on a label receiving face of a label receiver by vacuum and applying the label by air from the receiving face, the label receiving face may be planar or alternatively may be of different constructions and orientations (col. 5, lines 61-67). Thus it is clearly known in the art that the label receiving face is not required to be planar (see also JP 10-338217 which shows a label receiving face having an angled surface.

At issue is whether Yamaguchi teaches providing the label receiving face at an angle at the midpoint. In Figures 2, 6 and 8, a suction plate 36 is shown with a label shown on the suction plate and after application to the article. The Examiner is not convinced that the suction plate is not angled and only the label is angled, because the only way the label on the suction plate could be angled is if the suction plate itself is also angled. If the suction plate did not support the label in the configuration as shown, it would be reasonable to conclude that the label would not form an angle as shown but would instead, due to suction, be planar or even sucked upwards rather than shown as angled downwards. While Yamaguchi may not expressly make any statements about why the suction plate shown is angled, this is clearly shown in the figures. Drawings can be used as prior art. When the reference is a utility patent, it does not matter that the feature shown is unintended or unexplained in the specification. The drawings must be evaluated for what they reasonably disclose and suggest to one of ordinary skill in the art. *In re Aslanian* 590 F.2d 911, 200 USPQ 500 (CCPA 1979). (MPEP 2125). Taken in view of the

suggestion of Allen et al. that a label receiving face is not required to be planar, there is suggestion to provide a label receiving face as angled at the midpoint, as suggested by Yamaguchi.

With respect to Figure 10, the planar suction plate shown does not negate the angled suction plate shown in other figures, but in fact reinforces the difference in the embodiments shown. Applicant argues that an applicator with an angled surface would interfere with the ability of the pressing members to properly deform about an uneven surface in applying a label is mere conjecture. Clearly there must be sufficient openings in the suction plate to allow the pressing members to be pressed toward the label and article, but surrounding these openings, the suction plate supports the label until application and as shown in provided as angled at the center when viewed from the front.

Conclusion

(8)

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

JP 10-338217 shows a label receiving face with angled surface.

(9)

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO

MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

(10)

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Melvin Curtis Mayes whose telephone number is 571-272-1234. The examiner can normally be reached on Mon-Fri 7:30 AM - 4:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Chris Fiorilla can be reached on 571-272-1187. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would

like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Melvin Curtis Mayes
Primary Examiner
Art Unit 1734

MCM
May 25, 2006